

M. KIRBY C. WILCOX (SB# 78576)
 STEPHEN P. SONNENBERG (SB#164881)
 ANNETTE RITTMULLER (SB# 211882)
 SAIDAH GRAYSON (SB# 221713)
 PAUL, HASTINGS, JANOFISKY & WALKER LLP
 55 Second Street
 Twenty-Fourth Floor
 San Francisco, CA 94105-3441
 Telephone: (415) 856-7000
 Facsimile: (415) 856-7100

Attorneys for Defendant
 Bank of America, N.A.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

TIMOTHY L. FRANKLIN, individually,
 and on behalf of all others similarly
 situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A. and DOES 1
 through 50, inclusive,

Defendants.

CASE NO. C 05 00519 CRB

**~~[PROPOSED]~~ ORDER GRANTING
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT AND SETTING
 FINAL APPROVAL HEARING**

Date: December 9, 2005
 Time: 10:00 a.m.
 Place: Courtroom 8, 19th Floor

Judge: **Honorable Charles Breyer**

The joint motion of the Settling Parties for an order preliminarily approving a class action settlement and setting a settlement hearing, came on for hearing on December 9, 2005. The Court has considered the Joint Stipulation of Settlement and Release of Class Action (and its exhibits), the submissions of counsel, and all other papers filed in this action. The matter having been submitted and good cause appearing therefor:

The Court finds as follows:

1. All defined terms contained herein shall have the same meanings as set forth in

1 the Joint Stipulation of Settlement and Release executed by the Settling Parties and filed with this
2 Court (the “Joint Stipulation”);

3 2. The Class Representative and Bank of America, N. A., through their counsel of
4 record in the Action, have reached an agreement to settle all claims in the Action.;

5 3. The Court conditionally finds that, for the purposes of approving this settlement
6 only and for no other purpose and with no other effect on the Action, including no effect on the
7 Action should the Court not approve the Joint Stipulation or should the Settlement Effective Date
8 not occur, the proposed Class meets the requirements for certification under Rule 23 of the
9 Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that
10 joinder of all members of the class is impracticable; (b) there are questions of law or fact common
11 to the proposed Class, and there is a well-defined community of interest among members of the
12 proposed Class with respect to the subject matter of the Litigation; (c) the claims of the Class
13 Representative Timothy L. Franklin are typical of the claims of the members of the proposed
14 Class; (d) Class Representative Timothy L. Franklin will fairly and adequately protect the
15 interests of the Members of the Class; (e) a class action is superior to other available methods for
16 an efficient adjudication of this controversy; and (f) the counsel of record for the Class
17 Representative is qualified to serve as counsel for the Class Representative in his individual
18 capacity as well as his representative capacity for the class;

19 4. The moving parties also have presented to the Court for review the Joint
20 Stipulation. The Joint Stipulation is within the range of reasonableness and meets the
21 requirements for preliminary approval; and

22 5. The moving parties have also presented to the Court for review a plan to provide
23 notice to the proposed Class of the nature of the action, the terms of the settlement and the options
24 facing the Class including, *inter alia*: to opt out of the class action, to remain in the Settlement
25

1 Class, to object to the terms of the settlement, with counsel if desired, and/or to participate as a
2 Claimant. The revised notice will be mailed to all Class Members at their Last Known
3 Addresses. The notice plan proposed by the Parties is the best practical under the circumstances.

4 Good cause appearing therefor, IT IS HEREBY ORDERED that:

5
6 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Joint Stipulation
7 is preliminarily approved and the Class is provisionally certified;

8 2. The Class Counsel may move for no more than \$50,000 in costs and 25% of the
9 Settlement Amount, after subtracting costs, in attorneys' fees.

10 3. The Court appoints Rust Consulting, Inc. as the Settlement Administrator and
11 preliminarily approves deduction of costs of administration from the Maximum Payment
12 Amount.

13
14 4. Notice of the proposed settlement, and the rights of Class Members to opt out of
15 the settlement or become a participating claimant, shall be given by mailing of the Second
16 Amended Notice of Proposed Class Action Settlement for Unpaid Overtime Premiums proposed
17 by the Parties. The Notice will be sent by first class mail, postage prepaid, to all Class Members
18 pursuant to the applicable provisions in the Joint Stipulation and mailed no later than February
19 22, 2006. Defendant shall provide the Claims Administrator with the information necessary to
20 conduct this mailing as set forth in the Joint Stipulation. The Court hereby approves the content
21 and form of the proposed Second Amended Notice, Claim Form and Exclusion Form;

22
23 5. A hearing shall be held before this Court on June 16, 2006, at 10:00 a.m. to
24 consider whether the Court should grant final approval of the settlement:

25 (a) Written objections by Class members to the proposed settlement will be
26 considered if received by the Court, on or before April 24, 2006;

27 (b) At the Settlement Hearing, Class Members may be heard orally in support
28

of the settlement, or in opposition to the settlement, provided they submitted a timely written objection on or before April 24, 2006;

(c) Class Counsel and counsel for Bank of America, N. A. should be prepared at the hearing to respond to objections filed by Class Members and to provide other information as appropriate, bearing on whether or not the settlement should be approved; and

6. In the event that the Settlement Effective Date occurs, all Settlement Class Members will be deemed to have forever released and discharged the Released Claims. In the event that the Settlement is not approved for any reason whatsoever, the Joint Stipulation shall be deemed null and void and shall have no effect whatsoever.

7. No later than May 8, 2006, the parties shall file a joint motion for final approval of the settlement, and the Class Representative and Class Counsel shall file their motion for attorney fees and for approval of an enhancement payment to the Class Representative.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

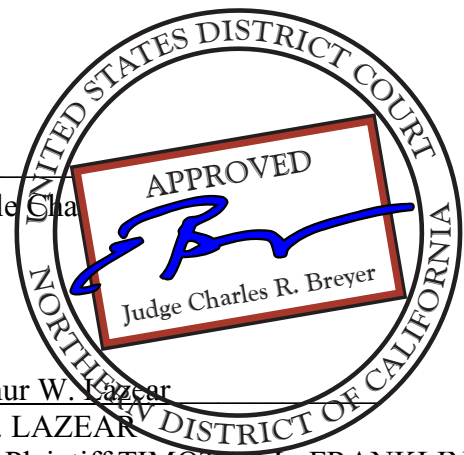
DATED: December 09, 2005

The Honorable Cha

Approved as to form and content.

DATED: December 8, 2005

/s/ Arthur W. Lazear
ARTHUR W. LAZEAR
Attorneys for Plaintiff TIMOTHY L. FRANKLIN



LEGAL_US_W # 53047706.2